

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IN RE PAUL A. MORABITO,

Debtor.

JH, INC., *et al*,

Appellants,

v.

JEFFREY HARTMAN, *et al*,

Appellees.

Case No. 3:21-cv-00252-ART

Bankr. Case No. 3:13-bk-51237-
GWZ

ORDER

At issue is whether the Bankruptcy Court abused its discretion when it imposed upon Appellees a monetary sanction of \$50,000 instead of no less than \$115,897.70, the amount of attorneys' fees and expenses incurred by Appellants at the time of filing the Sanctions Motion as a result of Appellees' Bankruptcy Rule 9011 violations. The Court finds that the Bankruptcy Court did not abuse its discretion in imposing a sanction of \$50,000.

I. Relevant history

Appellants and Paul Morabito have been involved in years of hostile litigation, which began in 2007 in the Second Judicial District Court, and which continued in the Bankruptcy Court. This appeal arises from the Bankruptcy Court's imposition of sanctions against Jeffrey Hartman, Esq. and Hartman & Hartman and David Houston, Esq. and the Law Offices of David R. Houston ("Hartman and Houston") for filing certain pleadings as attorneys for Paul Morabito ("Morabito") that were both frivolous and filed for an improper purpose. (AER 25.)

1 On May 29, 2020, Appellants filed their Motion for an Order Imposing
2 Sanctions Against Jeffrey Hartman, Esq. and Hartman & Hartman and David
3 Houston, Esq. and the Law Offices of David R. Houston Pursuant to Bankruptcy
4 Rule 9011 (the “Motion for Sanctions”). (See AER 17-1-17-5.) In the Motion for
5 Sanctions Appellants argued that Appellees filed pleadings without any
6 evidentiary support and for an improper purpose. (AER 17-1 at 1767.) Appellants
7 asked the Bankruptcy Court to impose sanctions in the total amount of their
8 attorney fees and reserved the right to file additional declarations for “fees and
9 costs incurred subsequent to the filing of this Sanctions Motion through the
10 hearing on this Sanctions Motion.” (AER 17-1 at 01785.) The Motion for Sanctions
11 was based in part on the declarations of Gerald M. Gordon, Esq. (the “Gordon
12 Declaration”) and John Desmond, Esq. (the “Desmond Declaration”). The Gordon
13 declaration represented that, “The fees and costs incurred by the Herbst
14 Defendants are \$115,107 in fees and \$790.70 in costs as of the date of filing the
15 Sanctions Motion. These amounts continue to increase and, therefore, will be
16 updated following the hearing on the Sanctions Motion.” (AER 18 at 02851.) The
17 Desmond declaration represented that, “The fees and costs incurred by the
18 Herbst Defendants are \$12,827 in fees and \$35.10 in costs as of the date of filing
19 of the Sanctions Motion. These amounts continue to increase and, therefore, will
20 be updated following the hearing on the Sanctions Motion. (AER 19 at 02866.)

21 Hartman and Houston opposed the motion for sanctions and, in the
22 alternative, requested that if the Bankruptcy Court granted the Motion, that the
23 court decline to impose monetary sanctions. (See AER 20.)

24 The Bankruptcy Court held a hearing on the Motion for Sanctions on
25 February 4, 2021, which lasted over four hours. (See AER 24.) It ultimately
26 decided to impose sanctions in the amount of \$50,000, which was less than the
27 attorneys’ fees. (*Id.*) The Bankruptcy Court asked Gordon to prepare written
28 findings and conclusions that were consistent with its oral findings and

1 conclusions. (*Id.* at 04112.) The written findings of fact and conclusions of law in
2 support of the order granting the motion for sanctions incorporated the findings
3 and conclusions made at the hearing: “The Court granted the Sanctions Motion
4 based upon the following findings of facts and conclusions of law (together with
5 the findings and conclusions made on the record at the Hearing (the “Findings
6 and Conclusions”).” (AER 25 at 4121.)

7 Appellants now argue that the Bankruptcy Court committed reversible
8 error when it imposed monetary sanctions of just \$50,000 against Appellees for
9 their violations of Bankruptcy Rule 9011 instead of no less than \$115,897.70 –
10 the amount of attorneys’ fees and expenses incurred by Appellants at the time of
11 filing the Sanctions Motion as a direct result of Appellees’ Bankruptcy Rule 9011
12 violations. Appellants contend that the Bankruptcy Court’s imposition of
13 monetary sanctions of just \$50,000 in the Order Awarding Sanctions was an error
14 because the Bankruptcy Court did not identify or apply the correct legal standard
15 or factors when determining the amount of monetary sanctions to impose against
16 Appellees for their violations of Bankruptcy Rule 9011. Additionally, they argue
17 that Bankruptcy Court committed reversible error because it failed to make
18 findings of fact as to whether the imposition of \$50,000 was sufficient to deter
19 repetition of such conduct or comparable conduct by others similarly situated.

20 **II. Legal Standard**

21 A court reviews the “decision to impose Rule 11 sanctions—and, if they are
22 warranted, the reasonableness of the actual amount imposed—for abuse of
23 discretion.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1126 (9th Cir. 2002). A court
24 abuses its discretion in awarding sanctions if its factual findings “‘were clearly
25 erroneous.’” *Id.* (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 386
26 (1990). The court’s legal findings must be affirmed unless they result from a
27 ‘materially incorrect view of the relevant law.’” *Id.* at 1127 (quoting *Cooter*, 496
28 U.S. at 402).

1 Imposing sanctions under Rule 9011 requires an inquiry into the pleadings
2 where the court considers whether the attorney signing the document made a
3 reasonable inquiry to determine the factual and legal basis of a particular
4 document, and whether the attorney interposed the document for any improper
5 purpose. FED. R. BANKR. P. 9011(b). “A sanction imposed for violation of this rule
6 shall be limited to what is sufficient to deter repetition of such conduct or
7 comparable conduct by others similarly situated.” FED. R. BANKR. P. 9011 (c)(2).
8 “Sanction may consist of, or include, directives of a nonmonetary nature, an order
9 to pay a penalty into court, or, if imposed on motion and warranted for effective
10 deterrence, an order directing payment to the movant of some or all of the
11 reasonable attorneys' fees and other expenses incurred as a direct result of the
12 violation.” *Id.*

13 Given the similarity between Rule 11 and Rule 9011, courts frequently refer
14 to Rule 11 jurisprudence in applying Rule 9011. *In re DeVille*, 361 F.3d 539, 550
15 n.5 (9th Cir. 2004). “Rule 9011 was amended in 1997 to conform to the changes
16 wrought by the 1993 amendments to Rule 11. FED. R. BANKR. P. 9011 advisory
17 committee note (1997).” *Id.* at 552.

18 **III. Analysis**

19 The Bankruptcy Court identified and applied the correct legal standard
20 when determining the amount of monetary sanctions to impose against Appellees
21 for their violations of Bankruptcy Rule 9011. The Bankruptcy Court held a
22 hearing on the Motion for Sanctions on February 4, 2021, which lasted over four
23 hours. (See AER 24.) The Bankruptcy Court acknowledged that, “both parties
24 have accurately stated the legal basis for awarding sanctions under Federal Rule
25 of Bankruptcy Procedure 9011, which really does incorporate Federal Civil
26 Procedure 11.” (*Id.* at 4035.) It noted that motions for sanctions “are intended to
27 have a deterrent effect, and they do allow attorneys’ fees.” (*Id.*) The Bankruptcy
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1 Court acknowledged that a sanction awarding reasonable attorneys' fees and
2 other expenses were "appropriate if warranted." (*Id.* at 4039.)

3 The Court disagrees with Appellants' argument that the Bankruptcy Court
4 abused its discretion in failing to consider factors such as the reasonableness of
5 the opposing party's attorney's fees, the minimum necessary to deter, the ability
6 to pay, and factors relating to the severity of the sanctionable conduct. (See ECF
7 No. 12 at 19.)

8 The Bankruptcy Court did consider the reasonableness of Appellants' fees
9 despite the failure of appellants to provide the Bankruptcy Court with a
10 breakdown of the claimed attorneys' fees. The Bankruptcy Court, instead of
11 requesting a breakdown of fees, accepted the declarations at face value,
12 commenting that it understood "how the amount of fees were arrived at based on
13 the work that this Court has done just to prepare for this hearing" but it was also
14 trying to account for the "deterrence remedy" as set forth in the rule. (See AER
15 24 at 4112.)

16 With respect to ability to pay, the Bankruptcy Court was not required to
17 consider ability to pay because neither party raised the issue of ability to pay. A
18 bankruptcy court is not required to make findings, *sua sponte*, with respect to a
19 party's ability to pay sanctions. *Seith v. Atl. Fin. Sav. Bank*, 15 F.3d 1089 (9th
20 Cir. 1994). To the contrary, the Ninth Circuit has held that the sanctioned party
21 bears the burden of producing evidence of inability to pay. *Id.* The Court also
22 notes that in the Rule 11 context, the Ninth Circuit has observed that, "Nothing
23 in Rule 11 mandates a specific weighing of this [ability to pay] factor[.]" *Christian*
24 *v. Mattel, Inc.*, 286 F.3d 1118, 1126 n.4 (9th Cir. 2002).

25 The Bankruptcy Court's analysis focused heavily on identifying the
26 sanctionable conduct and explaining why it was sanctionable. It identified the
27 pleadings that served as the basis for the motion for sanctions and spent a
28 significant portion of the hearing reciting the lengthy procedural history of the

1 case, providing context to highlight the problematic nature of the pleadings at
2 issue. (*See id.* at 3989-4041.)

3 The Bankruptcy Court spent considerable amount of time and attention to
4 the matter of deterrence. Appellants were given a full and fair opportunity to
5 argue for a sanction that encompassed all attorneys' fees. They argued that "the
6 relief we've requested should be granted (indiscernible) \$128,755.80, a clear
7 statement on the record that their -- that their statements were false and
8 frivolous. And I would ask for the additional attorney fees incurred up to this
9 time, through this hearing." (*Id.* at 4055.) The Bankruptcy Court was careful to
10 make sure it understood not just the argument but the basis for the amount
11 requested: "Is that dollar amount the amount that's in your declaration?" (*Id.* at
12 4055.) After hearing Appellants' argument regarding attorneys' fees, the
13 Bankruptcy Court awarded \$50,000, specifically stating that its sanction
14 "satisfy[ied] the deterrence requirements and an objective analysis of counsel's
15 conduct in this matter[.]" (*Id.* at 4112). It specifically noted it also wanted to deter
16 any finding "by negative implication" that there was any merit to the Injunction
17 Complaint or 60(d)(3) Motion. (AER 24 at 4108.) It noted that there were potential
18 financial ramifications from an order granting sanctions other than the sanctions
19 themselves. (*Id.* at 4110.)

20 The Court also rejects Appellants argument that the Bankruptcy Court's
21 imposition of monetary sanctions of \$50,000 against Appellees when they
22 incurred no less than \$115,897.70 at the time of filing the Sanctions Motion will
23 not result in deterring Appellees from such future conduct or other attorneys and
24 clients from adopting a similar course of conduct. Any sanction from a Court
25 carries with it significant professional consequences. The sanction imposed
26 reflected a reasonable balancing of competing factors. The Bankruptcy Court was
27 faced with the difficult and delicate task of considering the conduct of appellees
28 in the context of litigation that spanned years. The Bankruptcy Court

1 demonstrated a command of the facts and the law. It is evident from the record
2 that the Bankruptcy Court was deeply familiar with the parties and issues
3 involved. It exercised its discretion carefully and in conformity with the law.
4 Viewing the record as a whole, the Bankruptcy Court did not abuse its discretion
5 with respect to the amount of monetary sanctions imposed.

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7 Accordingly, this Court AFFIRMS the Bankruptcy Court's order.

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9 DATED THIS 2nd Day of February 2023.

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13 ANNE R. TRAUM
14 UNITED STATES DISTRICT JUDGE
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